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The findings in this case merely present the breach of an ordinary contract to thresh grain. The court found defendants were not entitled to recover loss caused by a storm over which plaintiff had no control. The weight of opinion seems to hold with the principal case, that such loss was not in the contemplation of the parties as the natural and probable result of the breach of such a contract. *Posser* v. *Jones,* 41 Iowa 674; *McCormick* v. *Vanatta,* 43 Iowa 389. The case of *Smeed* v. *Ford,* 28 L. J. Q. B. 178, 1 E. & E. 602, is, however, directly in conflict with these and with the principal case, and seems to be supported by sound reasoning.

DAMAGES—MENTAL SUFFERING UNCONNECTED WITH PHYSICAL.—Action for damages alleged to have been sustained by plaintiff because of defendant's failure to deliver a telegram; the complaint alleging that by reason of defendant's negligence in not delivering said telegram the plaintiff suffered great worry and distress of mind. The answer denied the allegation, and set up as a defense the usual statement printed on a telegram blank, that defendant is not liable for any unrepeated message beyond the amount received for sending the same. *Held,* that plaintiff is entitled to recover damages for mental suffering in such a case. *Barnes* v. *Western Union Tel. Co.* (1904),— Nev. —, 76 Pac. Rep. 931.

It was contended that defendant had secured itself by contract against the recovery of damages in case of delay or nondelivery if the message was not repeated. The complaint, however, was not for mistake or error in the message, but for failure to deliver it. If such a stipulation were given the force of a contract, the defendant is under no obligation to deliver any unrepeated message. *Tel. Co.* v. *Henderson,* 89 Ala. 510; *Smith* v. *Tel. Co.,* 83 Ky. 104; *Hibbard* v. *Tel. Co.,* 33 Wis. 558. This stipulation did not protect defendant against liability for damages which such repetition could have no tendency to prevent. *Fleischner* v. *Pac. Postal Tel. Co.,* 55 Fed. Rep. 738. The court reasoned that if mental suffering accompanied by physical suffering can and must be estimated, cannot and should not mental suffering unaccompanied by physical suffering be estimated? Where mental suffering is the result of some wrongful act it may be taken into consideration in assessing damages for the wrong, even though there may be no physical injury. *Davis* v. *Tacoma Ry. and Power Co.,* 77 Pac. Rep. 209. A dissenting opinion, however, holds that the mental anguish was not the natural or necessary consequence of the breach of the contract, and that defendant cannot be held liable for remote contingent consequences. See 2 MICHIGAN LAW REVIEW, 150, 420, 421, 641, 642.

DEEDS—DELIVERY TO A THIRD PERSON—REQUISITES.—A, the owner of a tract of land, made eleven deeds thereof to his children, in one of which appellant, X, was grantee of a specific part. The consideration for this was shown to be appellant's care of A during his old age, together with certain book accounts due appellant's husband, from which, it was agreed, there should be no more trouble. The eleven deeds, of which that in suit was one, were given to B, a stranger, with written instructions from A "at his death to deliver them to each one of the heirs." Subsequently, at A's request, B returned the deeds, together with the paper accompanying them, and after

their destruction a deed of the eighty acres was made to appellee, C, of all of which C had prior notice. After A's death, appellant, X, sued to quiet title. *Held,* that appellant was entitled to judgment. *Emmons* v. *Harding et al.* (1904), — Ind. —, 70 N. E. Rep. 142.

The court considered the appellant as a grantee not without equity, the consideration for the deed to her being in the nature of a family settlement. The subsequent acceptance by X referred back, by relation, to the date of the deed's delivery to B, giving appellant a prior title. The decision is in accord with the weight of authority. Assuming that there had been a delivery of the deed, its destruction by the grantor could not divest the grantee (appellant) of title. *Spangler* v. *Dukes,* 39 Ohio St. 642; *Albright* v. *Albright,* 70 Wis. 528, 537, 36 N. W. 254; *Hyne* v. *Osborn,* 62 Mich. 235, 28 N. W. 821. And it is clear that a delivery is sufficient based upon grantor's declaration in the presence of a witness that he delivers the deed as his, yet keeps it in his possession. *Garnons* v. *Knight,* 5 Barn. & Cress. 671. *Clavering* v. *Clavering,* 2 Vern. 473. And a delivery of a deed to a stranger to be redelivered to the grantee upon grantor's death, is generally sustained as a sufficient delivery. *Owen* v. *Williams,* 114 Ind. 179; *Goodpaster* v. *Leathers,* 123 Ind. 121; *Stout* v. *Rayl,* 146 Ind. 379; *Rankin* v. *Donovan et al.,* 46 App. Div. 225; Affirmed, 166 N. Y. 626.

DEEDS—SIGNING BY ONE NOT NAMED AS GRANTOR.—A and B were named as parties grantor in a trust deed covering grantors' cotton crop for the year 1902, and running to X, which deed was duly recorded, after being signed and acknowledged by C and B, husband and wife. A subsequent deed made by C and covering the identical crop previously encumbered was executed to Y, to secure a debt due the Z Co., being also recorded. Later in the year 1902, C sold this crop to X, whereupon Y sued to recover the proceeds of the sale. *Held,* that Y could recover. *Henry Marx and Sons* v. *Jordan* (1904), — Miss. —, 36 So. Rep. 386.

The court said: "The precise question presented for adjudication here is: Did this alleged trust deed to X, having been recorded, impart notice to third parties? Was Y, the appellee, notified by the record of such an instrument that it was the deed of C? We are clearly of the opinion that no such notice was imparted." This decision is in accordance with the weight of authority. Upon the question presented the United States Supreme Court says, "Now in order to convey by grant, the party possessing the right must be the grantor, and use apt and proper words to convey to the grantee, and merely signing, sealing, and acknowledging an instrument, in which another person is grantor, is not sufficient. *The Agricultural Bank of Miss. et al.* v. *Rice et al.,* 4 Howard 87. To the same effect are: *Hubbard* v. *Knous,* 3 Gray 567; *Peabody* v. *Hewitt,* 52 Me. 33, 83 Am. Dec. 486; *Harrison* v. *Simons,* 55 Ala. 510; *Adams* v. *Medsker,* 25 W. Va. 127. To the contrary see: *Hrouska* v. *Janke,* 66 Wis. 252, wherein the court places much reliance on Washburn, Real Property, Vol. III, Ch. 4, Sec. 1, also *Hargis* v. *Ditmore,* 86 Ky. 653. Deeds in which the wife alone appears as grantor, but which are signed and acknowledged by both husband and wife are usually held to pass the husband's interest, either by force of statute or inferentially